IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

WRIT PETITION NO.4113 OF 2006

Pandharinath Gangaram Rane. ...Petitioner.

Vs.

Ramchandra Narayan Manohar & Ors. ...Respondents.

.....

Mr.V.S.Kapse for the Petitioner.

Mr.Rajiv Patil for the Respondents.

.....

CORAM : DR.D.Y.CHANDRACHUD, J.

June 26, 2006.

P.C. :

The District Judge at Raigad came to the conclusion that the suit instituted by the landlord was liable to be decreed on two grounds, namely, (i) That the premises had not been used continuously without reasonable cause for the purpose for which they were let for a continuous

period of six months immediately preceding the institution of the suit; and (ii) The landlord required the premises bonafide and reasonably for the use and occupation of the members of his family.

In so far as the ground of non-user is concerned, it would be necessary to note that the suit was instituted on 11th February 1997 under Section 13(1)(k) of the Rent Act. Therefore, the relevant period was the six months immediately preceding that date. The Trial judge was of the view that since the ground which has been enunciated in Section 13(1)(k) is continuous non-user without reasonable cause in the six months immediately prior to the institution of the suit, that ground has to be pleaded. The Trial Court held that there is no pleading in support thereof in the plaint. The Appellate Court in para 14 of the impugned judgment and came to the conclusion that there were sufficient pleadings in support of the ground for eviction under Section 13(1)(k).

A perusal of the plaint would show that in

para 3, there is a categorical averment that since August 1987 until the date of the institution of the suit, the tenant has not been residing in the suit premises and that he was not making any use of the premises. It was also averred that since then until the date of the suit, the premises had been kept locked. In para 4 it was also pleaded that the tenant had retired from service; that he was residing since 1987 at the address referred to in the title to the suit. The tenant had one son who was employed and who lived separately from the father. It was also submitted that the tenant had no need of the premises and that only because the rent of the premises was meagre, the tenant was retaining the premises by obstructing the landlord. The Appellate Court was justified in reversing the finding of the Trial Judge that there was no pleading in support of the ground of non-user for a continuous period of six months prior to the institution of the suit without reasonable cause. The requirement of pleading the ground set out in Section 13(1)(k) is not a mechanical incantation. In the present case each of the constituent elements of the cause of action is pleaded.

In so far as the merits are concerned, it has emerged from the evidence that in the voters' lists for the year 1997 and for 2002 which were exhibited, the name of the tenant was shown not at the address of the suit premises at Pen but at Kalwa (Thane). The witness who was examined from the Telephone Department deposed that a telephone connection had been taken by the tenant in 1996 at Kalwa and was discontinued on 30th September 2002. In the course of the cross-examination, the tenant stated that he was in service of the Life Insurance Corporation till the year 1987 at Pen. The tenant stated that after 1987 he was transferred to Thane and he retired at Thane. The suit summons was admittedly served on the tenant at the premises at Kalwa. The tenant admitted that he has not produced any documentary evidence to show that he resided at Pen in the suit premises until the date on which he retired from service. The tenant stated that he possesses a Ration Card and Gas cylinder. The material documentary evidence which would have established the tenant's defence that he was residing at the suit premises at Pen was not

produced.

The finding of the Appellate Court was, therefore, born out by the material on record. There is no infirmity therein.

In so far as the issue of bonafide requirement is concerned, the Appellate Court has in para 16 arrived at the finding that the premises are required by the landlord for the purposes of his son Sunil to establish a Medical Shop at Pen. The issue of comparative hardship weighed against the tenant as the premises had not been used by the tenant at all since 1987.

In this background, the interference of this Court under Article 227 is not warranted. The Petition is dismissed. However, in order to enable the Petitioner to have recourse to his remedies in appeal, and on the oral request of Learned Counsel for the Petitioner, there shall be a direction to the effect that the decree for eviction shall not be executed for a period of two months.

. . . . . .